NEBRASKA ADMINISTRATIVE CODE

LAST REVISION DATE: January 16, 2012

TITLE 220 - DEPARTMENT OF LABOR

CHAPTER 7 - MANDATORY TRANSFERS OF EXPERIENCE ACCOUNTS

001. This chapter is adopted pursuant to *Neb. Rev. Stat.* §§48-654, 48-654.01 and 48-607.

002. If a successor acquires all or part of the business of a commonly owned, managed or controlled predecessor, a partial or full transfer of the predecessor's unemployment insurance account resources and liabilities is mandatory. The successor shall file a notice of acquisition and a statement setting forth the ~~an application to have an~~ appropriate percentage of the predecessor's experience account which it believes should be transferred to it. Such ~~application~~ notice of acquisition shall constitute the election of the successor, if not already liable, to become liable to the provisions of the Employment Security Law and shall provide such information as requested. The ~~form~~ notice of acquisition shall be filed within one hundred twenty days from the date of business acquisition. In the case of a partial account transfer, ~~any additional~~ information required to segregate the payroll shall be provided to the Department within sixty days from the date of the notice of acquisition ~~application~~. The Department shall take action to process an account transfer or partial transfer which it considers to be mandatory under *Neb. Rev. Stat.* §48-654.01 based upon best information available should a successor fail to file ~~an application~~ a notice of acquisition or provide information requested.

003. Substantially common ownership, management or control exists if any individual or group of individuals has an influence on the decision making of the common entities beyond what would be considered minimal or inconsequential.

004. If the predecessor in a partial transfer situation does not provide payroll information within sixty days after request has been made, the Department shall proceed with the transfer and make its best estimate of the amount of payroll being transferred and the correct employer for each employee.

005. Notice of action taken on a transfer shall be promptly given to the predecessor and successor by the Department. Should either party desire to contest the decision, a written appeal must be received by the Department within thirty days from the date of mailing of the notice. An appeal by the predecessor or successor will make both parties to the appeal. Appeal hearings shall be conducted in the manner set out in 223 NAC 1.

006. In partial transfer cases, the Department shall assign to the transferee that portion of the taxable payroll experience represented by the portion of the business acquired. The Department shall also assign to the transferee that portion of the experience account of the transferor represented by the ratio of the sum of the taxable payrolls of the portion of the business acquired to the sum of the entire taxable payrolls of the transferor. The Department shall utilize wage information during the period of the current incomplete calendar year, if applicable, and the four completed calendar years immediately preceding the transfer. The transferee, if not already an employer, shall become an employer as of the date of the transfer.

007. The Department may redetermine a mandatory transfer or partial transfer made pursuant to this chapter whenever it finds that the transfer or partial transfer was granted on the basis of misrepresentations of fact, but in no case shall such redetermination be made more than four years after the date of approval of the transfer or partial transfer.